

PLANNING COMMISSION MINUTES

THURSDAY, MAY 15, 2003

Public Service Center
BOCC Hearing Room, 6th Floor
6:30 p.m.

CALL TO ORDER

The public hearing of the Clark County Planning Commission was called to order at 6:30 p.m. by Chairman, Vaughn Lein. The hearing was held at the Public Services Center, BOCC Hearing Room, 6th Floor, Vancouver, Washington.

ROLL CALL

Members Present: Vaughn Lein, Chair; Jeff Wriston, Vice Chair; Jada Rupley, Carey Smith, Ron Barca, Dick Deleissegues, and Lonnie Moss.

Members Absent: None.

Staff Present: Patrick Lee, Long Range Manager; Bob Higbie, Assistant Manager; Rich Lowry, Chief Deputy Prosecuting Attorney; Jim Vandling, Forester/Planner III; and Sonja Wiser, Administrative Assistant.

Other: Cindy Holley, Court Reporter.

GENERAL & NEW BUSINESS

A. Approval of Agenda for May 15, 2003

The agenda was approved as distributed.

B. Approval of Minutes of April 17, 2003

It was **MOVED** by Jeff Wriston and **Seconded** by Lonnie Moss to **APPROVE** the Minutes of April 27, 2003. **MOTION WAS APPROVED** by unanimous voice vote of all members present.

C. Communications from the Public

None.

PUBLIC HEARING ITEMS & PLANNING COMMISSION ACTION

A. OPEN SPACE & TIMBERLAND APPLICATIONS:

Planning Commission will consider staff recommendations for approval or denial of Timberland or Open Space Applications for Current Use Assessment pursuant to Chapter 84.34 of the RCW. The criteria for Open Space or Timberland was established by Resolution No. 1977-10-32, adopted November 7, 1977 and Ordinance No. 1982-02-65 adopted March 17, 1982, and Ordinance No. 1996-02-30, adopted February 27, 1996.

Staff Contact: Jim Vandling, (360) 397-2375, Ext. 4714 or e-mail:

VANDLING: Good evening, Mr. Chairman and members of the Planning Commission, Jim Vandling, Clark County Forester and Planner with Community Development. I'm joined here tonight by Mr. Bob Higbie from Long-Range Planning and Rich Lowry from our prosecutor's office. This is the 15th year that Community Development has reviewed the open space applications. And this year we've had 28 total requests. We actually had 34 applications but six of those applications were companion applications to transfers out of either designated forest land or farm and ag requiring the applicants to provide management plans for the parcels that they were asking us to consider. The statutory authority for the open space taxation is found in Chapter 84.34 of the Revised Code of the State and provisions 458-30 out of the WACs and in Chapter 3.08 of the Clark County Code. I have put together a brief on the process and procedures for the intake and review of these applications at the very backs of your packages. I have articulated this process in the past to the Planning Commission. If you would like for me to re-articulate that this evening, I can for the benefit of the public; however, the same brief is in the handouts that are outside the door here.

Out of the 28 requests there were 67 parcels involved and slightly over 900 acres. 20 of the requests for the timberland classification fully met all of the criteria in 3.08.070. Two of the requests for timberland classification partially met those criteria and therefore were partially approved. We had five requests for open space under other stream protection, soil conservation or recreation, and those five requests were approved, they fully met all of the criteria. We had one open space request for urban natural open space. That request was denied due to the fact that the County Code does not contain the elements for review or approval of that particular classification, although that classification is mentioned in State statute. Up until this time we have not adopted those elements of the State statute, therefore do not have the basis for an approval for that application request.

The summary you'll find on Exhibit A is broken into two parts. One is new applications for open space and timberland in the upper half, and the lower half we find the transfers from

designated forest land to timberland or open space. And I have included the zoning districts for each one of the applications to the right for your own information. So we have the approvals, the two partial approvals and the denial which you'll find from the second from the bottom.

LEIN: Any questions of Jim at this point?

DELEISSEGUES: I have one. You said that you had five applications for open space, I only see three?

LEIN: There's some from transfers down below.

VANDLING: Yeah, we have transfers. We have, the very top three rows --

DELEISSEGUES: I see it, Jim. I see it. Thank you.

LEIN: Any other questions of Mr. Vandling? Typically we have taken the approvals in a lump sum and just moved them on unless there's someone in the audience wishing to testify for the case that's already going to be approved. I see Mr. Sellers, I'm assuming you're here not to condone an approval?

SELLERS: No, I'm here to object to a denial.

JELLEY: Observers.

LEIN: Okay, thank you. With that there is no other public testimony probably at this point. Am I getting myself in trouble? Okay, good. Lonnie Moss has indicated he must recuse himself on the Washougal Motocross so he will not be voting on that. I will open it for any comments from the public on the approvals and the partial approvals. If not, we'll return that to the Planning Commission. We'll entertain discussion on the approvals. I would request that the Washougal Motocross be left as an individual item so Mr. Moss can vote on the remainder of them and we'll handle that with a separate motion. Is there any discussion?

DELEISSEGUES: No. I'd just go ahead and make the **MOTION** if there's no discussion.

WRISTON: Second.

BARCA: And what does that motion consist of?

DELEISSEGUES: The **MOTION** would be to **APPROVE** all the applications that are recommended for approval with the exception of 03-0010, Washougal Motocross.

WRISTON: And partial approval.

DELEISSEGUES: Okay, and the partial approvals.

LEIN: Is there still a second?

WRISTON: **Second.**

LEIN: Okay, thank you. Any further discussion?

MOSS: Hang on just a second, I have a question of Mr. Vandling here. Jim, would you comment.

VANDLING: The Washougal Motocross, which is 03-0010, and the Ralph Huffman application, 03-0009, are both --

MOSS: Both tied together.

VANDLING: -- are both tied to the same ownership.

MOSS: Yes. And I want to recuse myself from both of those since Moss & Associates was the applicant.

BARCA: Now we got to withdraw the motion.

LEIN: Can we modify the motion?

MOSS: Yes.

LEIN: It would be 03-0009 and 03-0010 that we would be pulling from this motion. Is that agreeable with the --

DELEISSEGUES: Yes.

LEIN: -- motion? And the second?

WRISTON: Second.

LEIN: Any other discussion? Could we have roll call, please.

ROLL CALL VOTE

BARCA: AYE
SMITH: AYE
WRISTON: AYE
RUPLEY: AYE
DELEISSEGUES: AYE
MOSS: AYE
LEIN: AYE

LEIN: The other two are the case with Ralph Huffman and Washougal Motocross. Entertain a motion or discussion.

DELEISSEGUES: I'd make a **MOTION** that we recommend approval for both 03-0009 and 03-0010.

BARCA: **Seconded.**

LEIN: Moved and seconded. Any further discussion? Could we have roll call, please.

ROLL CALL VOTE

BARCA: AYE
SMITH: AYE
MOSS: ABSTAIN
WRISTON: AYE
RUPLEY: AYE
DELEISSEGUES: AYE
LEIN: AYE

LEIN: That leaves us with one case, the 75-0290, the Newland Group which has been denied. Any questions of Mr. Vandling before we open it to the public? Okay. Open --

LOWRY: Before you do I think it might --

HIGBIE: You got to get on the microphone.

LOWRY: It might be of some assistance to sort of -- Rich Lowry, Prosecuting Attorney's Office, to set the stage for the issue which I think ultimately will be argued to the Board of County Commissioners, there will be a full hearing before the Board, on this matter.

The issue is one strictly of statutory construction. The State statute for open space classifications that are as a result of designation on the comp plan -- well, let me step back a second. The State statute provides for two ways to get open space on recognized for taxation purposes. One is if the open space is actually designated and zoned as such through the comprehensive plan that the County doesn't have that program available. The second is if you fall within one of eight subcategories of open space that are provided in the statute. The County Code specifically has subsections in it that enumerate criteria in addition to the statute for six of the eight subcategories that are in the State statute. It is staff's reading of the County Code, and one which I agree with, that the two subcategories that are in the State statute but not called out in the County Code simply aren't available in Clark County. This application falls within one of those two.

The argument, or at least part of the argument, I anticipate Mr. Sellers forwarding is that we don't have the authority at the local level to limit the categories of that are provided in State law for open space classification. My counter argument will be that the statute also provides broad discretion in terms of whether or not those subcategories can be met and there's nothing wrong with the legislative body making a predetermination as to whether they're met. Again, those arguments are purely a matter of statutory construction and ultimately are going to be made before the Board of County Commissioners and I don't think either I or Mr. Sellers want to spend a great deal of your time making argument on the issue.

LEIN: Any questions of Mr. Lowry before we --

WRISTON: Yeah. Just curious. You said can be met, but they didn't, the code is silent, so now it's not a question of whether they can be met?

LOWRY: No. The issue is, I think, whether by being silent the code is essentially saying that that subcategory simply isn't available in Clark County.

WRISTON: Is it isn't available or can't be met? I mean and that's what I'm saying. I mean your interpretation of the RCW is that it's the County can say we don't want these categories?

LOWRY: Yes. And Mr. Sellers, of course, will disagree with that.

WRISTON: Okay. I'm just, I wanted to make --

LOWRY: And the way we do it in the County Code is by not having made provision for recognizing that subcategory.

WRISTON: And you think that's within the discretion?

LOWRY: Yes.

WRISTON: Okay. I just wanted to make a clarification. I wanted to make sure there wasn't, we weren't saying that --

LOWRY: Yeah, the County --

WRISTON: -- timber, timberland or open space isn't appropriate here because it doesn't meet certain, you know, we don't have any of these lands. Okay.

LOWRY: It's only an issue with --

WRISTON: It's within the discretion.

LOWRY: -- open space. Right.

BARCA: Mr. Lowry, then by omitting those two is there something about those two particular categories that we felt like was not going to be beneficial to the public as far as open space goes?

LOWRY: Let me read what those two are.

BARCA: Okay, that would be helpful.

LOWRY: The first is, and this isn't applicable here, but the first is land area which enhances the value to the public of abutting or neighboring parks, forests, wildlife preserves, nature reservations or sanctuaries or other open space. So, you know, that gets pretty vague. You're talking about something that's adjacent to something you're wanting to protect.

And then the one that's directly applicable here under which the application was made is retain in its natural state, tracts of land not less than one-acre situated in an urban area and open to public use on such conditions as may be reasonably required by the legislative body granting the open space classification. Now as you can tell that theoretically could be available to any one-acre tract or larger in the urban area so long as some level of

agreed upon public access was permitted. I think it was within the County legislative authority's determination to conclude that there was not a big public interest in trying to preserve the spotty areas of one-acre lots that simply because they existed. Most of the other classifications relate to some inherent attribute of the property, the soils characteristics, the stream corridor, this one doesn't have any of that.

WRISTON: Is there any history legislatively? I mean do you recall was it ever discussed specifically? I know you didn't want to get into this, but it's intriguing. So, I mean, we're not --

LOWRY: Right. You'd have to go back to originally 1977 when we first got into this area, and then the last major reviews for were in '82, and I guess I was around in '82, but I don't recall whether there's any legislative history.

WRISTON: So you don't recall whether there was ever specifically?

LOWRY: Right. I mean I suppose in the archives there would be some staff report or something.

WRISTON: Well --

VANDLING: We're --

WRISTON: Go ahead, I'm sorry, Jim.

VANDLING: We're not disputing the fact that perhaps some other Counties in the state, primarily Western Washington, haven't incorporated some dispensation into their own county codes, but the Counties that we know of that have been outlined to us by the Department of Revenue are using something called the Public Benefit Rating System rather than a more fundamental approach to the open space guidelines as we have in 3.08. And we have had discussion in the County of trying to configure either a hybridized form or pure form of the public benefit rating system into the County Code; however, the farthest we've ever gone is basically doing a sensitivity analysis of what the cost of that would be to create that code, what the cost of it would be to administer the code, how much staffing we would need, and from what we have done so far the staffing to administrate a system like that is significantly higher than the staffing that we have right now between the Assessor's Office and the Community Development. However, it's not a cold issue, it's not a dead issue, we have some people in the County staff that are still examining this whole possibility.

LOWRY: The public benefit rating system allows one to essentially go to a rheostat in

terms of how much tax benefit there is from an open space designation, and if you went to that kind of a system I think what Jim is suggesting then more marginal open space would be easier to recognize because you could provide lesser tax benefit from the recognition.

BARCA: I would assume, then, from all of this discussion that there isn't anything that says that the opportunity for public benefit isn't there, it's just a matter that we're saying we don't generally understand how to administer it to get the maximum amount of public benefit out of it?

LOWRY: No. No. If the statute in a totally separate section allows a County to opt to go to a public benefit system, if we were to do that, we would have to adopt a system whereby we identified in advance how much of a tax break you got depending upon what class of open space you qualified for and what other factors were deemed relevant. So it's not -- that system isn't available to us today because we haven't adopted the methodology that the statute requires be adopted.

WRISTON: What's the nature of the parcel and how does it relate? I mean is it part of a master plan, PUD, open space?

VANDLING: The parcel itself is actually inside the city limits of Vancouver. The parcel is heavily encumbered with Category III forested wetlands and some marginal Category II nonforested wetlands that it's our understanding that the applicant has secured Corps of Engineers approval for wetland mitigation on that site for a development that they have already constructed in the Fisher's Landing area. So how that would enter into it is completely another question. If we were on a public benefit rating system, which is basically a point scale rating system where you go out and look at the basic structure and function of that particular site and then assign points to it, it might come out higher on the point system if it was being reviewed for wetlands if we had that, those review elements available to us in code. And granted there are some Counties that use that; however, we really officially either at the Planning Commission level or the Board of Commissioners level have never as a body officially taken up this discussion unless it was taken up during in 1993. At that time there might have been some discussion but --

LOWRY: Again that presents another -- we're getting way too far into this.

WRISTON: No, I think he knew where I was going.

LOWRY: That represents another interesting illustration of how the County Code works. Under the State statute one of the subcategories is promote soil conservation and/or promote conservation of soils, wetlands, beaches or tidal marshes. So wetlands is under the State statute an eligible criteria for open space classification, but when you go to the

County Code it says applications for open space classification based upon promotion of the conservation of soils will be restricted to, and it goes on and lists the criteria and it doesn't deal with wetlands. So under the current County Code there is an even more clear election by the legislative body not to include wetlands as an eligible open space criteria even though the State statute includes them.

WRISTON: Well, when someone does a master plan or a PUD or something and leaves open space aside in order to get a higher density or some other type of transfer of some right would this apply if that was the case?

LOWRY: Well, one of the issues --

WRISTON: If it applied in the County?

LOWRY: One of the issues we discussed with the Assessor is exactly that in talking about going to a benefit point system. The Assessor says that where you have property that's been set aside as part of an overall development scheme they already take that into account when they take, do their appraisals and that may either result in an increased value to the adjoining parcels because of the benefits of and the increased value of living next to an amenity or a lowering of the value of the property and/or a lowering of the value of the set aside because it's subject to such heavy development restrictions so that the Assessor has questioned the utility of going to this kind of a system because the Assessor believes we're already sophisticated enough when we value properties that we take into account the extent to which critical areas or development covenants restrict what can be done with those properties.

DELEISSEGUES: Well, I've got a question about what is the advantage to the property owner of going from farm and agricultural classification to open space?

VANDLING: To tell you the truth, I can't answer that. That would be a formulated response to a question like that the Assessor would actually have to make that calculation. I don't have the wherewithal in front of me here to do it for you.

DELEISSEGUES: Is there some tax advantage to it?

MOSS: There's an income requirement.

VANDLING: Well, we're looking at two levels of farm and ag. When you're over 20 acres on your composite parcel, you're not required to show revenue product. If you're less than 20 acres then you're required to annually submit a revenue statement of what you've made that previous year to show that you are in fact generating the primary function of what

we're trying to protect is the generation of the production of food and fiber and the amount is lower. However, if an applicant was looking at boundary line adjusting or selling or doing a land division to create parent parcels that were less than 20 acres, then there would be some motivation to be in the open space classification because the acre threshold there is 10 acres. So if you're going to have residual of 10 acres left over, then there would be some motivation to be reclassified. And honestly I can't say what the revenue difference would be, the revenue recovery, you know, tax-wise to the County would be between open space and farm and ag. I'm sure we could have someone look into that.

WRISTON: I mean we've done it just as a compliance issue. I mean if you qualify for open space and you're concerned about complying with the farm and agricultural, then, you know, switch. And the revenue side I don't think was a huge issue, I think it was kind of a just make sure you comply so you don't get tagged with someone coming out and saying you're not complying and hit you with -- I mean it's not all it's cut -- I mean when the day comes when they take you out of these classifications, it's not that it's all, you know, cut up to be, it's just a painful process no matter even if you've complied for X amount of years or not. I mean it's back taxes and penalties. Or back taxes I guess. If you comply it's not penalties, right. Or I don't remember. Anyway, it's not a, you know, it's a deferral, interest, and interest, thank you, and then there are penalties if you don't comply, that's right, but it's a deferral and it's not a wonderful thing when you're -- at the end of the day it's not a wonderful thing.

VANDLING: And we have looked at the parcels adjacent to this application to the east of it and there are several large unsegmented parcels that are also in the same classification, farm and ag, and we haven't had any communication with those folks as to whether or not they were wanting to reclassify into a different designation.

LEIN: Any other questions before we open it to public?

MOSS: Yeah, just one. Mr. Lowry, I think there's some confusion on my part and probably because of the terminology that we use, you know, we refer to all of this kind of taxation benefit as the open space program. My question is: If we were to go to a Public Benefit Rating System would it have any effect on land that was not available for public access such as agricultural and forest land?

LOWRY: Actually you're right, we use the term "open space" pretty loosely. At least I do. The definition of "open space" under the statute includes lands that are designated as open space and zoned as open space, we don't have any of that; second, open space that qualifies under one of the eight subcategories, and then third, farm and agriculture. The public benefit system only applies to that second group, or it may apply to the first, I can't recall, but it would not affect the farm and ag I don't believe.

MOSS: Okay, thank you.

LEIN: Any other questions? Okay. Mr. Sellers.

SELLERS: Thank you, Mr. Lein. My name is Jim Sellers, I'm an attorney, I represent the applicant, or I should say the taxpayer, Newland, the Newland Group, also known as Newland Northwest. I'll try and be brief because I don't think you're probably going to want to decide this issue tonight, but I do have a couple of comments to make.

First of all, I don't know if this is proper but I'm going to ask for it anyway, and that is this: The application originally submitted for my client listed one criteria which was the basis for the application, it was Number (viii); is that correct?

VANDLING: Under the RCW it would have been under 84.34.020 and it would have been .020(b), 1(b), Roman Numeral (viii), and that would be the taxonomy of that provision.

SELLERS: I would like to add as a part of that application that it be based on as shown in the application (i), (iii), (iv) and (vii) as well. And once again I don't know if that, if it's proper to amend at this time, but that's nevertheless the request I want to make on the record, that the application be amended in that fashion. And then I'd just simply like to --

BARCA: Are those supposed to mean something to us?

SELLERS: Yeah. The application submitted only had Number (viii) marked.

BARCA: But since I don't know what the other numbers are that you've referred to, this is a discussion between you and staff right now rather than testimony to us.

SELLERS: Okay. I don't have a copy of the application in front of me. Mr. Vandling has it and I presume he can show it to you.

WRISTON: You're amending that within the RCWs the eight categories or whatever you're saying you want (i), (iii), (iv), (vii), there's probably recreational in there somewhere --

SELLERS: That's correct.

WRISTON: -- and some other things and it gets, yeah.

LOWRY: (iii) is the one that does reference wetlands but the County Code does not include wetlands.

SELLERS: Let me just briefly outline my argument for the record and explain it, there's a couple of other things I have to explain. One is that Counties in the state can adopt such police regulations or as are not in conflict with general rules of the state legislature, that's Article XI, Section 11. Excuse me, Article XI. Yeah, Section 11 of the Washington State Constitution. There's also provision in the Washington State Constitution which I can't at this time cite that states that all class of property be taxed equally.

With that in mind, if you look at the definition of "open space" it categorizes open space in two ways. Number one, open space means, a, any land so designated by an official comprehensive land use plan adopted by any city or county and zoned accordingly. And the second one is, b, or any land the preservation of which in its present use would, and then it goes on to the eight that we referred to which I can read through if you want me to but it involves conserving and enhancing natural or scenic resources, protecting streams or water supply, promoting conservation soils and wetlands and so forth. And that's contained in RCW 84.34.020.

If you go to RCW 84.34.037, which is another statute, it provides that an application made for classification or reclassification of land under the section I just read you which is an area subject to a comprehensive plan shall be acted upon in the same manner in which an amendment to the comprehensive plan is processed. And the comment I'd make at this time is what staff has told you is the County Code does not have those open space classifications that we've requested the open space classification or tax purposes be granted. However, that section goes on to say application for classification of land which is an area not subject to a comprehensive plan shall be acted upon after public hearing, after notice of the hearing and so forth, and then it goes on to say in determining whether it should be granted or approved the statute establishes a criteria. One of the criteria is the resulting revenue loss or tax shift in this section is quite long.

My point is is that if the land that's the subject of the request for the tax deferral is designated as open space within the County's comprehensive plan, then it qualifies; if it does not, then it goes through a public hearing, and the question is does it meet the criteria. And what the County has done in the past is treated all applications as though they were comprehensive plan amendments and if they didn't meet the criteria set forth in the comprehensive plan, they needn't meet the criteria for the tax deferral. That's not the way the statute sets it up. I don't think the County has an option of redefining the categories in the criteria for tax deferrals established by the State legislature because that would make the way that this is done in this County inconsistent with the rest of the state which violates the rule the County can't adopt regulations in conflict with State law. And secondly, classes of property would be taxed at a different rate throughout the state if the County could in fact do that. And that's basically the grueling of my argument. Thank

you.

LEIN: Any questions of Mr. Sellers?

DELEISSEGUES: Yeah, let me just get this clear. The way I understand it, then, is that your position is that this property meets the definition or criteria for "open space" but there's just no mechanism within Clark County to adopt it or to approve it. Is that basically it?

SELLERS: I think the mechanism is in the State statute to adopt and approve it. The way the County is interpreting the legal principles that pertain to this is that you arbitrarily cannot consider a request to an open space classification that is not recognized and identified in your code, which at least some of the ones that we would be requesting are not identified in your code and our position it doesn't make any difference, there are categories set forth in the State statute and the County by its code can't alternate, change the system of taxation set forth in the statute, change the criteria by which people qualify for open space tax deferrals.

DELEISSEGUES: Okay, I take that as kind of a yes.

LEIN: Any other questions of -- excuse me. Mr. Lowry.

LOWRY: I guess I'd inquire to the extent to which you want to hear further argument?

WRISTON: Yes.

LOWRY: Uniformity, which is one of the points that was raised, was addressed by the people in the state of Washington because we have an open space or current use system of taxation because there's a Constitutional exception that was approved by the people of the state of Washington for a current use system of taxation; otherwise current use taxation would violate the very uniformity that Mr. Sellers talked about. Beyond that I think what Mr. Sellers is suggesting is simply that the County doesn't have the authority to exercise the discretion it clearly is in the statute legislatively, that we have to do it in an ad hoc fashion.

The arguments that he's making in terms of this being a State statute would be true, I think, if the State statute didn't contemplate significant amount of local discretion. The very subcategory that this application at least originally came forward under, and again I think it's reasonable to read, it would qualify any tract of land not less than one-acre situated in an urban area and open to public use on such conditions as may be reasonably required. That would include huge amounts of as yet to be developed land within the urban boundary.

And then I guess my final comment is that Mr. Sellers jumped to .037. We have been with the definition section of what open space constitutes. The criteria for approving open space starts out with the following: The granting authority may take cognizance of the benefits to the general welfare of preserving the current use of the property which is the subject application. Very broad authority that we may take cognizance of. And then it goes on, as Mr. Sellers indicated, for quite a while in talking about very specific factors, but the first one is to take cognizance of the benefits to the general welfare. Our position is very simply that the Board of Commissioners was not limited to doing that in an ad hoc fashion as applications came forward, but could do so legislatively as they did in the County Code and restrict the type of applications in Clark County that the Board concluded would be of benefit to the general welfare.

VANDLING: I might want to add one thing to what Rich just said. The fact that the applicant has significant acreage on these parcels it's committed to wetland mitigation under a Corps permit and a mitigation plan combining what might be in that conservation covenant that they've signed with the Corps and the City might be in conflict with this public access element of what Rich just mentioned due to the fact that their wetland mitigation areas are generally highly stocked with new plantings. The new plantings have to be protected. What the public access would do to degrade what the applicant might have been doing this year in his plantings is somewhat questionable whether or not on their annual reviews for survivability of the plantings if intense public access in a very highly populated area like this would have a degrading effect on what they've been doing would certainly be a consideration.

LOWRY: But only consideration if you concluded that this application qualified for consideration.

VANDLING: Correct.

LOWRY: Again our bottom line position is you can't even consider it.

BARCA: And I appreciate the speculation on both of your counts for what the parcel may or may not do. If it didn't meet public access criteria, then there would be a reason for denial; right?

LOWRY: Well, the --

BARCA: That's a negotiated point that has to be worked out with the applicant. I guess the only thing I'd like to say is I've heard you speak a couple of times for the Board of Commissioners and their will on this, but you also mentioned that the wording of this really hasn't been hashed out since about 1982?

LOWRY: That's correct.

BARCA: So perhaps it would be valuable to revisit what the public will and the Commissioners' will might be. Wetlands weren't generally recognized as valuable in the county in 1982, perhaps the public value to them has increased now, hence the aspect of the mitigation plan and the set-aside. I'm thinking 37 acres in that part of the county which is fairly dense and highly urbanized might be considered valuable in the public's eye if they did generally have access to it. But since this is something that isn't in your eyes available at this moment because of statutory language, I guess I would say that your organization and yours has the ability to either make this extremely complex and hard to get through or very nimble and flexible in trying to work out whether indeed there's public benefit that outweighs the revenue shift, and whether an entertainment of an expansion to the existing wording was in the public's best interest.

I don't think it has to get down to what if every one-acre parcel that was open and available now would come onto the rolls or be applied for, there's all kinds of limits that you've already discussed. Without even having to go into the rheostat method I think that could be applied. In general purposes as we become more urban and dense I think this has a lot of value towards the County. If I can recognize what you're saying limits you from moving forward at this moment I can accept that, but it also seems like it would be valuable to explore a method in which this could become part of the public benefit quotient in the future and I think it's worthwhile exploring.

WRISTON: I agree.

RUPLEY: Oh, this is scary.

WRISTON: Yeah, this is scary. I'm just curious, how does it work with, you know, when a subdivision develops or a PUD develops or whatever and you have this open space area, be it wetlands or limited public access or whatever, and the homeowner association I think presumably takes over that area, right now in terms of any kind of taxation on that they're relying on the Assessor decreasing the taxes on that or are they paying the taxes on that? I mean there's no, so there's no -- there's nothing in the codes that --

LOWRY: Let's assume it's a privately owned stormwater facility and the County Code requires it to be in a separate tract. As a practical matter the most negative thing would be for it to be taxed at a high value where nobody would pay the taxes on it and for the County then to acquiring it through foreclosure. The Assessor --

WRISTON: I never thought of that. That's a good idea.

LOWRY: The Assessor recognizes -- well, the function of the Assessor is to try to determine what fair market of the value is.

WRISTON: Yeah, I just never seen it go down that much, that's why I'm expressing.

LOWRY: My understanding is that where you have a portion of property that is a part of a larger development, if that keeping that in open space benefits and increases the fair market value of the developable properties, then the Assessor essentially transfers value from the open space tract to the lost benefit from it. If it's a tract that's set aside as a wetland tract or a stormwater facility and there are covenants or plat restrictions that apply to it that preclude it from being developed for anything else, the Assessor takes that into account when that separate tract is developed.

Now where it gets messy is if you're dealing with a property that's encumbered by wetlands but we don't know how to what degree, we don't know what could be done if development regulations were applied, in those cases I think the Assessor has sort of a rule of thumb that is applied which may or may not really reflect fair market value, but where it's a developed piece of property and you have a set-aside, then it's pretty clear that the property would not have much value on the open market.

WRISTON: Is there anything, there's nothing that prohibits the Assessor, or is there, from if we explored this, if the Commissioners said they want to explore this sometime in the future legislatively and adopting this from them, transferring that benefit anyway to the adjacent parcels? In other words --

LOWRY: No. You'd --

WRISTON: -- having it in open space and transferring the value. I guess it would be interesting to see how it really is done in practice but and I don't know.

LOWRY: Well, the only, there really is, and I probably misspoke myself when I said transfer the value, the Assessor can't do that. What he can do is to take into account --

WRISTON: The increased value.

LOWRY: -- the increase in market value, if there would be one, from having permanently dedicated open space adjacent to the (inaudible) --

WRISTON: It's an amenity.

LOWRY: -- tract. Now I don't think the Assessor can make that assumption that it's permanently dedicated simply because it's in open space. He can make that assumption if it's part of a development tract that has plat restrictions or a covenant that's applicable to it.

MOSS: Yeah, just I don't really have a lot of experience at this, but this I did just gain some information about one of the remainder tracts in a Planned Unit Development recently and this is one that's some nine years old now. I didn't understand how those were taxed and found out from the homeowner's association who has ownership of this remainder parcel that the tax value is considered to be zero in that particular case. I don't know whether that's always the case when you have that kind of an open space situation or remainder. I am wondering here on this particular parcel to give us some perspective on this whole issue do we know what the market value is that the Assessor's Office has assigned to this parcel?

VANDLING: We're not supplied with any of that information.

MOSS: You know, I'm personally having a little trouble thinking that somebody ought to pay a whole bunch of tax on a parcel which has no real potential for economic use, but I don't know how we get there given the current set of circumstances with our code.

LOWRY: Well, that, and to be flippant, that may be more of an issue of whether values that were given should have been appealed to the Board of Equalization if it was valued at a level considerably above fair market value. I mean that's a different issue than whether -- assuming it was the open space issue, really isn't the right forum to grant relief.

SMITH: In the Assessor's formula is there a way to attach a value of 37 acres in Fisher's Landing has got to increase the quality of life out there, it may help attract businesses, that's the kind of thing that Counties and Cities do to attract businesses, and is that somehow figured into this?

LOWRY: My understanding is the Assessor takes that into consideration where you have a permanently dedicated open space that does increase value of the surrounding property. I don't think the Assessor does that simply because adjacent property happens to be in open space for taxation purposes. Now whether any of this piece of property is dedicated or restricted as a result of the surrounding development I don't know.

VANDLING: I think more properly it would be how encumbered the property is with the covenants that are tied to mitigation plans that are associated with the applicant's other developments within the immediate surrounding area. I do know that the Assessor's Office does formulate dispensation for encumbered properties like that. If they're unbuildable due to covenants like that, then they do take that into account.

LEIN: Jim, how comfortable are you with Mr. Sellers' request to modify the application and add the other four elements?

VANDLING: I'm not, I'm not at all comfortable with that. I believe at this stage, before the Planning Commission, to amend an application would be redundant to the review that's already been done, and with the submittal materials that they supplied us we still wouldn't have any basis to consider adding or amending the application to add Roman Numerals (i), (iii), (iv) and (vii) to what they are already going under which is Roman Numeral (viii) from the RCW. What I would recommend if they wanted to take a different approach is to request that the application be pulled and they can file a new application before the end of the calendar year based on these other criteria that they want us to review.

LOWRY: I think I might just add to that that the -- I believe each of those, although there might be some argument that they could qualify under the statute, it's clear that they could not qualify under the County Code. So each of those other ones presents the same issue as to the ability of the County to exercise its discretion in a legislative way by adopting the County Code in addition to the discretion it has in processing an application. So I don't think it adds anything to what you already heard.

LEIN: Okay, thank you. Other questions of staff?

MOSS: No. Since in cases like this I view the role of the Planning Commission is making sure that the arguments are fully flushed out and understood, I would be interested in hearing from Mr. Sellers because we've had quite a bit of discussion, quite a bit of questions from staff, if he has anything that he might like to say that could be informative in reaching a decision here.

LEIN: Mr. Sellers.

SELLERS: Well, just a couple of things offhand. First of all, I don't know that I was asking for a ruling on my attempt to amend the application, whether I can or can't is governed I presume by the statute. But I guess one of my concerns is my client made this application a whole long time ago and by the statute it's supposed to be acted on by the County legislative authority by May 1st and what's good for the goose is good for the gander. And if we can turn a deaf ear to the -- or a blind eye I should say to that deadline amending the application shouldn't be a problem either, which is fairly routinely done in legal proceedings. Of course Mr. Lowry's correct that if you -- if his interpretation of the law is correct we wouldn't be eligible whether you amended it or not and I guess that's the issue. And if he's correct it shouldn't make any difference if we amend it. It shouldn't make any difference to the County.

The other comment I was going to make is on the issue of valuation. First of all, I want to point out on this tract, this tract was part of a large Planned Unit Development that had, was an amalgamation of a lot of parcels of land; however, in the Planned Unit Development when the various use categories were set up they were surveyed out and they didn't match the parcelization. After the application was approved by the City of Vancouver what my client has done is gone back to try and describe the parcel that is he can't develop on. So the question was asked how's that taxed. Well, the truth is it is my recollection it was taxed, it had an agricultural classification on one or several of the parcels that were combined to make up the development application and for tax purposes it hasn't been separately described out so we don't know what value will be assigned to it at this point because it doesn't exist as a separate parcel.

The second comment I wanted to make was I think the impression has been created that somehow my client traded the right to develop the property that's developed by relinquishing rights on this open space, that isn't true. This land is wetland. It fits the definition of "wetland" under federal law. It didn't matter what my client did with this land, he couldn't develop on it because the law precludes it, and the law precluded it before the application for the Planned Unit Development was ever made, so it was never one of his options. It may be that there was some increases in density because not all the land could be developed, but if that were the case, and I don't know if I can even tell you at this point if it was the case because there were so many zoning classifications mixed together, for instance there was multi-family zoning that was given up on some of the developable land and changed to single-family and things like that, I don't know if he ever straightened it out. But the restrictions on this land are not a result of the land use application that was approved, although the conditions of approval do restrict the use of the land. Before that happened it was already restricted and that's why we contend the lower value.

There is actually a Washington State Supreme Court case in the state involving Mt. Vista and the Mt. Vista Homeowner's Association and our Assessor several years ago took the position that that should be, their common park should be valued as prime subdivision land and the Supreme Court said that's not correct, it's got to be developed as what it is and that is land that can't be used because it's restricted by a private covenant. So I think the Assessor's obligated to down value land that cannot be developed. What impact that has on the remaining land I think is questionable or subject to variations depending on where you are because the remaining land is not valued based on what the open space is decreased by, it's based on what similar properties throughout the jurisdiction are valued at. In other words it's comparative value method for determining the value of the land that's been developed. All that we know for sure is the Assessor cannot give full value of the land that's been encumbered and what the Assessor's going to do on this parcel of property I'm not entirely certain. Anyway, those are the comments I had unless you have

some questions.

LEIN: Any questions of Mr. Sellers? Thank you. Is there any other public testimony on this? If not, we'll return it to the Planning Commission. Questions of staff or comments?

RETURN TO PLANNING COMMISSION

BARCA: I'd like to pass this forward without a recommendation.

LEIN: Could you say that a little louder.

BARCA: I would like to **pass this forward without a recommendation.**

WRISTON: Yeah, I would agree too. I think we've had, that's twice tonight, I think we've had the full discussion. I mean I would like to encourage the Commissioners that if they don't adopt the interpretation that allows this that we at least got to explore it. And I may have been the one that gave the impression that it was part of the development and I never believed it to be part of the development or they wouldn't be here. I was kind of curious, I was kind of taking it one step further, and what does happen, because I know that these areas commonly do become part of a development and I guess I'd also wonder what an owner's options are. I mean if they gave it to a Columbia Land Trust or something like that, I don't know what, I don't know how this all -- there's nothing that we have taxation-wise that allows preservation of wetlands or open space. And so that if a, like a land trust held it that it --

LOWRY: Well, if it's owned by a private nonprofit --

WRISTON: Then there is that's --

LOWRY: -- it will be exempt from.

WRISTON: That's right. Okay. So I guess that's always an option I guess, but I assumed it wasn't part of this development. I was just kind of taking it one step further. I was kind of curious of what happens because I know that this happens a lot where it is part of a development and it didn't seem fair that a homeowner's association should have to take over the burden of taxes at a value of something that could never be developed, but maybe the Assessor deals with that. But I guess my point would be if the Commissioners don't adopt this interpretation, then I don't know which way they should go on it that we look into whether or not this is something that would be beneficial to the public either on a public benefit or --

DELEISSEGUES: I'd like to see us make a recommendation and vote on it up or down.

SMITH: I think I agree with Ron. All we've heard is the preliminary jousting here and the Commissioners are going to get the full deal meal. It seems like it would be preliminary for us to come up with a decision not having the full discussion.

WRISTON: Well, Rich, what do you think? I mean we would be voting --

LOWRY: You know, the issue before you is not on the merits. The issue before you is simply whether this is an application that you have jurisdiction to hear. The County staff and County Attorney are telling you you don't have jurisdiction. The applicant is saying we're preempted by State law from precluding you from considering it. At this point I don't think you have the ability to make a decision on the merits assuming it qualified because you haven't had a presentation on that.

WRISTON: But making a decision on the jurisdiction is now we're making a legal decision which --

LOWRY: Right. And I think a "no" recommendation is a way of just kicking the legal issue upstairs.

WRISTON: Well, I mean, and we've had an extensive amount of talk, I mean I think probably about 45 minutes more than you originally wanted to have, Rich, which tends to be the way we go, but I think we had a lot more discussion. Did you have -- oh, I didn't know if you guys had something you wanted to share with the rest of the class here. No, I just wanted to make sure.

LOWRY: There's another quirk, believe it or not, that we'll have to deal with when we get to the Board.

MOSS: You don't have 45 minutes to get into that.

WRISTON: You bring another one up we'll be here for another --

LEIN: I'll entertain a **motion**.

BARCA: Well, and that would be my **MOTION**, that we pass this to the Board of Commissioners without a recommendation.

WRISTON: With lots of good discussion.

LEIN: With all the discussion.

WRISTON: I **second**.

LEIN: Any further comments? Could we have roll call, please.

ROLL CALL VOTE

BARCA:	AYE
SMITH:	AYE
MOSS:	AYE
WRISTON:	AYE
RUPLEY:	AYE
DELEISSEGUES:	I vote NO just because I think under the circumstances the staff's made the right decision.
LEIN:	AYE

OLD BUSINESS

None.

NEW BUSINESS

None.

COMMENTS FROM MEMBERS OF THE PLANNING COMMISSION

None.

ADJOURNMENT

The hearing adjourned at 9:30 p.m. All proceedings of tonight's hearing are filed at Clark County Community Development/Central Records Division.

Vaughn Lein, Chair

Date

Minutes Transcribed By:
Cindy Holley, Court Reporter
Sonja Wiser, Administrative Assistant